MOBIL OIL CORP.

IBLA 78-91 Decided June 2, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas leases U-33328, U-33336, U-33343, U-33345, and U-33348.

Affirmed.

1. Oil and Gas Leases: Reinstatement

   Under 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

2. Accounts: Payments -- Oil and Gas Leases: Rentals --Payments: Generally -- Words and Phrases

   "Payment." Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering his leases, and, until such time as it is received, no "payment" of annual rental has occurred. Accordingly, where a check is mailed prior to the due date but does not arrive until more than 20 days after this due date, no "payment" was made prior to that time, so that the lease automatically terminated by operation of law, and the Department is without authority to consider a petition for reinstatement of the lease.

3. Accounts: Payments -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals -- Payments: Generally -- Words and Phrases

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental, within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when he submits payment to the BLM office administering his leases, and when BLM has the opportunity either to receive or decline it. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for reinstatement of an oil and gas lease terminated for failure to make timely payment of annual rental.

APPEARANCES: Paul Moody, attorney-in-fact, Mobil Oil Corp., Denver, Colorado, for appellant.

OVERRULED: The Board's decision styled C. E. Knowles and R. E. Darling, 3 IBLA 307 (1971), is hereby overruled.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Mobil Oil Corp. (appellant) appeals from the October 17, 1977, decision of the Utah State Office, Bureau of Land Management (BLM), denying its petition for reinstatement of five oil and gas leases. We affirm.

Appellant asserts and has effectively shown that, on July 11, 1977, it mailed a check to BLM as rental payments for these leases. However, the check did not arrive there until November 8, 1977, for reasons which are not clear from the present record, but which apparently involve mishandling of the mailing by the Postal Service. In the interim, on September 26, 1977, appellant submitted a second check. This was 56 days after the due date. Appellant requests that we should direct that these leases be reinstated since it undertook more than adequate measures to pay the rentals timely.

[1] We are without authority to reinstate these leases. Appellant's leases terminated automatically when rental payment was not received in the Utah State Office by the close of business on August 1, 1977, the anniversary date of these leases. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). Under 30 U.S.C. § 188(c) (1970), 43 CFR 3108.2-1(c), the Department has no authority to reinstate an

oil and gas lease so terminated unless rental has been paid or tendered at the proper office within 20 days of the due date and is precluded by law from granting reinstatement in any case where this condition has not been met. 1/ Apostolos Paliombeis, 30 IBLA 153 (1977); Vern H. Bolinder, 30 IBLA 26 (1977); Oil Resources, Inc., 28 IBLA 394, 84 I.D. 91 (1977); A. E. White, 28 IBLA 91 (1976); Albert DiGiulio, Jr., 26 IBLA 169 (1976); Merilyn K. Buxton, 24 IBLA 269 (1976); Edward Malz, 24 IBLA 251 (1976); C. J. Iverson, 21 IBLA 312, 82 I.D. 386 (1975); and cases cited therein. Appellant did not pay rental on these leases until September 26, 1977, more than 20 days after the anniversary date, August 1, 1977, and therefore the Department is without authority to consider its application for reinstatement thereof.

[2] Appellant contends that it paid the rentals when it placed rental checks in the United States mail. This argument is without merit. Where a rental check is deposited in the mail and postmarked before, but arrives after, the due date for rental, we have repeatedly and consistently held that the payment is not timely, since payment is not made until the check actually arrives at the appropriate BLM office. See Richard L. Triplett, 32 IBLA 369 (1977); Leonard A. J. Tancredi, 32 IBLA 325 (1977); David W. Gregg, 32 IBLA 293 (1977); Adolph F. Muratori, 31 IBLA 39 (1977). Under 43 CFR 3103.1-2(a), payment of rental must be submitted only to the authorized officer of the office of BLM which administers the lease in question. Until such time as the rental arrives in the appropriate BLM office, no "payment" has been made. Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976). Thus, appellant did not make its rental payments on these leases until September 26, 1977, when the second payment actually arrived in the Utah State Office. Accordingly, the leases terminated, since no payment was made on or before the due date, and the Department is without authority to consider a petition for reinstatement since no payment was made on or before 20 days after the due date.

[3] Appellant argues alternatively that by depositing payment in the mails, it tendered rental payment within 20 days of the due date, within the meaning of 43 CFR 3108.2-1(c), so that the Department has authority to consider its petition for reinstatement. We cannot agree.

1/ 30 U.S.C. § 188(c) (1970) provides that where an oil and gas lease "terminated by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, but such rental was paid or tendered within 20 days thereafter," the Secretary may reinstate the lease under certain conditions. (Emphasis added.)

In Kerr v. United States, 108 F.2d 585, 586 (D.C. Cir. 1939), the Court said:

> The word "tender" is usually held to mean that the thing offered must be actually produced and placed in such position that control over it is relinquished by the tenderer so that the tenderee may reach out and lay hold on it. Richey v. Stanley, Tex. Civ.App., 38 S.W.2d 1104; Linch v. Nebraska B. A. Co., 120 Neb. 819, 235 N.W. 456; Kreiss Potassium Phosphate Co. v. Knight, 98 Fla. 1004, 124 So. 751. It also must be made at the place agreed upon. Holmes v. Holmes, 12 Barb., N.W., 137. Neither of these conditions, in our opinion, is satisfied by the mailing of a money order, unless the payee has consented to make the post office his agent to receive payment. The act of mailing does not amount either to a tender or to a payment until the actual receipt of the letter by the addressee. The rule in such cases is that the postal authorities are the agents of the sender. In this case they were agents of the insured to transmit the premiums to the Bureau office in Washington. Until the money order reached the Bureau, it was not the money of the insurer but the money of the insured, and until that event the insured was not entitled to the reinstatement of his policy.

An earlier case, Leahy v. United States, 10 F.2d 617, 618 (D. Mont. 1926), considered the effect of a mailing of a critical document to a Federal Bureau, the Court there saying:

> Contrary to plaintiff's contention, mere mailing of notice does not suffice. If not by the Bureau received, mailing goes for nothing, is not performance of the condition. Otherwise would defeat the object of the law, would open wide the Pandora's box the law is intended to firmly close. That by mailing the notice is intrusted to a co-ordinate department of the government which conducts the Bureau is immaterial. For the nonce the postal authorities are agents of the insured, and his are the consequences of any their failure of duty, even as in any like case of resort to the post in performance of conditions.

There is a line of cases in the field of insurance law which hold, in essence, that where the company has acquiesced in receiving premiums which were mailed on or before the due date, when a claim develops between the date of the mailing and the date of delivery the company must treat the mailing of the premium as a tender of payment, and may not avoid liability by asserting that the policy

had lapsed prior to its receipt of the premium at its office. However, this line of cases depends upon a history of acquiescence by the company in regarding such mailings as a tender. By distinction the Bureau of Land Management and this Department have held long and often that there is no payment or tender of a lease rental by the act of placing the money in the mail, but rather that it must be timely received in the proper office in the full amount. Vern H. Bolinder, supra; A. E. White, 28 IBLA 91 (1976); Edward Malz, supra.

The purpose of preserving a lessee's right to have his petition for reconsideration entertained where he has tendered payment within 20 days after it is due is to protect him in the event that BLM declines to receive it at that time. But unless the proper BLM officer has the opportunity either to receive or decline the proffered payment, no tender can be said to have occurred. See H. E. Stuckenhoff, 67 I.D. 285, 287 (1960).

The only Departmental decision holding to the contrary was rendered by this Board in C. E. Knowles and R. E. Darling, 3 IBLA 307 (1971), prior to the promulgation of regulations to implement the statute. That decision has never been followed, and has, in effect, been overruled sub silentio by our subsequent decisions in Vern H. Bolinder, supra; A. E. White, supra; and Edward Malz, supra. As we now regard the holding in C. E. Knowles and R. E. Darling, supra, to be incorrect, it is hereby expressly overruled.

Because appellant did not make payment of the rental due, as defined by the regulations, prior to the due date for doing so, its leases automatically terminated. Moreover, because it neither made nor tendered payment prior to 20 days after the due date, we are without statutory authority to consider its petition for reinstatement of these leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing
Administrative Judge

We concur:

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Frederick Fishman
Administrative Judge

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Martin Ritvo
Administrative Judge